Wolff v. NH Department of Corrections et al Doc. 20

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

| | |
|---|---|
| Charles Wolff,<br><br>Plaintiff,<br><br>v.<br><br>New Hampshire Department of Corrections, et al.,<br><br>Defendants. | CIVIL ACTION NO. 06-321-PB |

**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

NOW COME the Defendants, by and through their counsel, the Office of the Attorney General, and submit the following Answer to Plaintiff's Amended Complaint.

**First Amended Complaint**

**I. Parties**

1. Admitted. Defendants lack sufficient knowledge to affirm or deny Plaintiff's citizenship.

2. Admitted that Charles Wolff is currently incarcerated in the New Hampshire State Prison for Men.

3. Admitted that the New Hampshire State Prison for Men is a state agency with a location of 281 North State Street, Concord, NH 03301.

4. This portion of the complaint was dismissed by the United States District Court, and therefore no response is required.

Dockets.Justia.com

5. Admitted that James Daly is employed as a Chaplain for the New Hampshire State Prison for Men. The remainder of this paragraph contains conclusions of law for which no response is required.

**II. "Closing Paragraph"**[1]

- Admitted that Plaintiff's dietary issues were of concern to staff due to medical reasons. By way of further answer, Defendants referred Plaintiff to the Department of Corrections, Health Services Department for nutritional evaluation. Plaintiff subsequently notified the office of the Chaplain that he was suffering from medical conditions allegedly caused by his religious kosher diet. The remainder of this paragraph contains conclusions of law for which no response is required.

**Second Amended Complaint**

- Defendants deny that Plaintiff fully exhausted the grievance process. The remainder of this paragraph contains conclusions of law for which no response is required.
- Defendants admit that the New Hampshire Department of Corrections has replaced its kosher menu due to a change in vendors; therefore certain selections of kosher meals are no longer available to kosher inmates. By way of further answer, defendants admit that although a change in vendors has taken place, the New Hampshire Department of Corrections continues to recognize the various religious diets pursuant to its policy and procedure directive (PPD 7.17) outlining Religious Programming and Diets. The remainder of this paragraph contains conclusions of law for which no response is required.

---

[1] Defendants note that Plaintiff's complaint fails to comply with Rule 10(b) of the Federal Rules of Civil Procedure, in that it is not set forth in numbered paragraphs, with each paragraph containing a single set of circumstances. Defendants will make their best effort, nonetheless, to respond fairly to the factual averments in Plaintiff's complaints, using bullet points.

- Admitted that among other numerous medical issues, Plaintiff's clinical diagnosis of diabetes has established that certain foods should not be consumed and/or his portions reduced (i.e. sweets, bread, eggs, fish, tofu and soy). The remainder of this paragraph contains conclusions of law for which no response is required.
- Defendants deny stating that they would contact the "Berlin facility" (known as the Northern Correctional Facility "NFC") to discuss plaintiff's diet issues. By way of further answer, Plaintiff remains housed at the NH State Prison for Men and has not been transferred to any other facility other than the Secure Psychiatric Unit for mental health evaluation.
- Admitted that Plaintiff has experienced significant weight loss since January, 2006. By way of further answer, Defendants have attempted to evaluate Plaintiff's extensive weight loss issues and have made the appropriate referrals to the Health Services Department at the prison. Defendants deny Plaintiff's allegations that he did not receive any assistance from Health Services Department or that he was only fed bread and water.
- Defendants deny that they instructed the Plaintiff to leave the dinning hall without breakfast. By way of further answer, defendants prepare Kosher meals for each of those inmates at the time of their arrival to the dinning hall and it is likely that Kosher inmates may have a longer wait than other non-Kosher inmates due to special preparation.
- Admitted that Jeff Perkins is the Director of Food Service at the New Hampshire State Prison for Men. By way of further answer, Defendants further admit that Plaintiff had enrolled in the culinary arts program at the prison and Defendants have observed Plaintiff consume non-kosher food while participating in the culinary arts program. The prison's culinary arts program does not provide for kosher prepared meals.

- Admitted that upon Defendants knowledge of Plaintiff's non-kosher food consumption, further investigation revealed that Plaintiff had in fact not only consumed non-kosher food during his participation in the culinary arts program but also purchased numerous non-kosher items from the canteen. By way of further answer, NH Department of Corrections Policy and Procedure Directive (PPD 7.17) outlines inmates religious programming and diets and prohibits inmates that are receiving a religious diet from consuming or possessing any food item that violates their approved religious diet. The remainder of this paragraph contains conclusions of law for which no response is required.
- Admitted that Defendants discontinued Plaintiff's religious kosher diet upon knowledge and belief that Plaintiff continued to violate his religious diet by consuming various non-kosher food items. By way of further answer, Plaintiff refused to accept kosher prepared meals and/or selectively consumed kosher prepared meals in addition to consuming non-kosher food.

AND IN FURTHER ANSWER, and by way of affirmative defense, the Defendants state as follows:

A. The Complaint fails to state a claim upon which relief may be granted.

B. Plaintiff's claims are barred in whole or in part by the doctrine of release, waiver and estoppel.

C. Defendants deny that they violated any constitutional, federal, state, statutory, or common law right of plaintiff.

D. Defendants are entitled to all applicable immunities including 11th Amendment immunity, sovereign immunity; qualified immunity and official immunity, absolute judicial or quasi-judicial immunity and absolute witness testimony immunity.

E. Plaintiff's claims are barred by the Prison Litigation Reform Act ("PLRA");

F. Plaintiff's claims are barred by laches, the statute of limitations, and/or the failure to timely exhaust his administrative remedies;

G. As discovery has not yet commenced, Defendant reserves the right to assert additional defenses during the course of discovery and/or trial in this matter.

WHEREFORE, the Defendant respectfully requests that this Honorable Court:

A. Dismiss Plaintiff's complaint; and

B. Grant such other and further relief as justice may require.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF
CORRECTIONS, ET AL.

By and through their attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

\s\ Andrew B. Livernois_________
Andrew B. Livernois, Bar No.14350
Assistant Attorney General
Civil Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3650

Certification

April 2, 2007

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to Charles Wolff, *pro se*, 281 North State Street, Concord, NH 03301.

/s/ Andrew B. Livernois
Andrew B. Livernois